SUPREME COURT OF THE UNITED STATES.

No. 290.

STEAMER JAMES BATTLE AND CARGO, JAMES BROOKS ET AL., INTERVENORS, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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1 District court of the United States, southern district of Florida, in admiralty. Prize.

UNITED STATES OF AMERICA:

THE UNITED STATES
vs.
THE STEAMER JAMES BATTLE and CARGO. } No. 216.

Be it remembered that, on the 27th day of August, in the year of our Lord one thousand eight hundred and sixty-three, Thomas J. Boynton, esq., attorney of the United States for the southern district of Florida, filed in the office of the clerk of said court his libel of information against the steamship or vessel called the James Battle, her tackle, apparel, and furniture, and her cargo, in a cause of prize, in the words and figures following, to wit:

District court of the United States, southern district of Florida, in admiralty.

THE UNITED STATES
vs.
THE STEAMER JAMES BATTLE and CARGO. }

To the honorable William Marvin, judge of said court:

The libel of Thomas J. Boynton, attorney of the United States for the southern district of Florida, who libels for the United States, and for all parties in interest, against the steamship or vessel called the James Battle, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That, pursuant to instructions for that purpose from the President of the United States, William M. Walker, of the United States
2 navy, in and with the United States commissioned
the De Soto, her officers and crew, did, on the eig
of July, in the year of our Lord one thousand eight
sixty-six, subdue, seize, and capture on the high seas
war, the said steamship or vessel called the James Batt
the burden of four hundred and seven tons, with a valuable cargo on board of the same, and that said vessel and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this honorable court, and that the same are lawful prize of war, and subject to condemnation and forfeiture as such.

Wherefore the said attorney prays that the usual process of attachment in prize causes may issue against said vessel, her tackle, apparel, furniture, and cargo; that monition may issue citing all parties having or claiming any interest or property in said vessel or cargo, to appear and claim the same; that the nature, amount, and value may be determined; that due and proper proofs may be taken and heard; and that on all due proceedings being had, the said vessel, the James Battle, together with her tackle, apparel, furniture, and cargo may, on the final hearing of this cause, by the definitive sen-

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That, pursuant to instructions for that purpose from the President of the United States, William M. Walker, of the United States
2 navy, in and with the United States commissioned ship of war, the De Soto, her officers and crew, did, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, subdue, seize, and capture on the high seas as prize of war, the said steamship or vessel called the James Battle, of about the burden of four hundred and seven tons, with a valuable cargo on board of the same, and that said vessel and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this honorable court, and that the same are lawful prize of war, and subject to condemnation and forfeiture as such.

Wherefore the said attorney prays that the usual process of attachment in prize causes may issue against said vessel, her tackle, apparel, furniture, and cargo; that monition may issue citing all parties having or claiming any interest or property in said vessel or cargo, to appear and claim the same; that the nature, amount, and value may be determined; that due and proper proofs may be taken and heard; and that on all due proceedings being had, the said vessel, the James Battle, together with her tackle, apparel, furniture, and cargo may, on the final hearing of this cause, by the definitive sen-

tence of this court, be condemned, forfeited, and sold, and the proceeds distributed according to law.

(Signed) THOMAS J. BOYNTON,
U. S. Att'y, S. D. of Florida.

3 Whereupon the following order was made and entered in this cause, to wit:

AT CHAMBERS, *August 27th*, 1863.

Ordered that attachment and monition be issued as prayed in the foregoing libel.

Whereupon attachment was issued to the marshal of said district, commanding him forthwith to attach, seize, and take into his custody the said steamship or vessel called the James Battle, her tackle, apparel, furniture, and the goods, wares, and merchandise comprising the cargo of said vessel, in the port of Key West, or wheresoever the same may be found within his precincts; and the same to keep until the further order of this court.

Which attachment was afterwards by him returned duly executed, and with the return thereon indorsed is on file in the clerk's office.

Also monition was issued to the said marshal, commanding him forthwith to cite and admonish all persons whomsoever, having or pretending to have any right, title, claim, or interest in or to the said vessel, the James Battle, her tackle, apparel, furniture, or cargo, to appear at an admiralty session of said court, to be held at the court rooms of said court at Key West, in said district, on Monday, the second day of November, A. D. 1863, at ten o'clock in the forenoon of that day, to show cause, if any they have, why condemnation and forfeiture should not be decreed according to the prayer of said libellant.

Which monition was afterwards by him returned duly executed, and, with the return thereon indorsed, is on file in the clerk's office.

4 Also on the twenty-seventh day of said month of August, the attorney of the United States files the following stipulation in this cause, to wit:

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It is hereby stipulated and agreed by and between Thomas J. Boynton, attorney of the United States for the southern district of Florida, on behalf of the United States, and Jesse J. Cox, the master of said steamer James Battle, and bailee of the captured property, on behalf of the owners of said steamer and her cargo, that an order and rule may be entered for the sale of said vessel and cargo immediately, and before the final judgments of the courts.

THOMAS J. BOYNTON,
U. S. Att'y, S. Dist. of Fla.
JESSE J. COX,
Master of Steamer James Battle.

Whereupon the following order was made in this cause, to wit:

5 By consent of the parties it is ordered that a writ of venditioni exponas be issued for the sale of the said steamer James Battle, her tackle, apparel, furniture, and cargo, and that the marshal make returns of sale, and deposit the proceeds as required by law.

Entered August 17th, 1863.

GEORGE D. ALLEN, *Clerk.*

Whereupon, on the day and month last aforesaid, a writ of venditioni exponas was issued to the marshal for this district commanding him to cause the said steamer James Battle, her tackle, apparel, furniture, and cargo to be sold in the manner and form upon the notice by the law required, and to deposit the proceeds of such sale with the assistant treasurer of the United States, subject to the order of this court.

Afterwards, to wit, on the 23d day of December, 1863, James Brooks and divers others file their petitions to be paid their claims out of the proceeds of said steamer.

Afterwards, to wit, on the 13th day of January, A. D. 1864, this cause came on to be heard before this court. Present, the Hon.

Philip Fraser, judge of the district court of the United States

6 for the northern district of Florida.

Homer G. Plantz, esq., attorney of the United States, appearing on behalf of the United States and captors, moves the hearing of this cause.

Whereupon proclamation being duly ordered and made, and no person appearing to claim any portion of said steamer James Battle or cargo, on motion of said attorney it is ordered that the default of all persons claiming the same be entered, and that the libel filed in this cause be taken pro confesso. On further motion of said attorney it is ordered that the testimony in this cause taken in preparatorio before the prize commissioner, and the papers returned as found on board the vessel be opened and published for the benefit of all parties concerned. When the court proceeded to hear this cause, ex parte, upon the allegations and proofs, and the depositions taken in preparatorio before the prize commissioner; the cause being fully heard, the premises were thereupon submitted to the court.

Afterwards, upon consideration thereof, on the 16th day of

7 said month of January, it was ordered, adjudged, and decreed as follows, to wit:

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This cause having come on to be heard on the libel and proofs and testimony taken in preparatorio, and all due proceedings having been had, and on proclamation being made in open court no person appearing to claim any portion of said vessel and cargo, it is ordered that the default of claimants be entered, and that the libel in this

cause taken pro confesso. And it appearing to the court that the said steamer James Battle and cargo were, at the time of capture, employed in violating the blockade established by the United States and are enemy property: Now, on motion of Homer G. Plantz, esq., attorney of the United States, it is ordered, adjudged, and decreed that the said steamer James Battle, her tackle, apparel, furniture, machinery, and cargo be condemned and forfeited to the United States as lawful prize of war. And it is further ordered that the clerk of this court issue a writ of venditioni exponas to the
8 marshal of the district for the sale of said vessel and cargo, and that the marshal make return of sale and expenses to this court, and deposit the proceeds of such sale with the assistant treasurer of the United States, subject to the order of this court, as required by law.

PHILIP FRASER, *Judge.*

Afterwards, to wit, on the 11th day of February, 1864, the marshal returns his account sales in this case, showing the proceeds of sale of said vessel to be the sum of twenty-three thousand dollars, and of the said cargo and apparel of said vessel to be two hundred and forty thousand eight hundred and ninety-five dollars and sixty-two cents.

Afterwards, to wit, on the 25th day of February, 1864, the following decree of distribution was made in this cause, to wit:

9 *Prize captured July 18th, 1863.*

District court of the United States for the southern district of Florida.

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THURSDAY, *February 25th*, 1864.

A final decree of condemnation of vessel and cargo having been pronounced in this case, and no appeal taken, and it appearing to the court that the gross proceeds of the sales, subject to the order of this court, are as follows, to wit:

Vessel proceeds reserved	$
Cargo and apparel of vessel	240,895 62
Total	

And that the costs, expenses, and charges, as taxed and allowed, are as follows, to wit:

Marshal's fees and charges, including freight and marine insurance on the goods sent for sale from Key West to New York, wharfage, storage, labor bills at Key West, expenses of sale, advertising, auctioneer's commissions, &c	$15,763 74

District attorney's fees	$1,224 48
Prize commissioner's fees and expenses	633 14
Clerk's fees	29 80
Total	17,651 16

Leaving a net residue of two hundred twenty-three thousand two hundred forty-four dollars forty-six cents (223,244 46) of cargo and apparel of vessel for distribution.

And it appears to the court that the U. S. steamer De Soto, Walker commanding, was the capturing vessel, and that she is entitled to share in the prize, and that no other vessels are so entitled, and that the prize was of inferior force to the capturing vessel. . It is hereby adjudged and decreed that the said ship is so entitled to share in the said prize one-half of said net residue. And it is ordered that the costs, fees, and expenses herein taxed and allowed, amounting to the sum of seventeen thousand six hundred and fifty-one dollars sixteen cents, be paid to the persons severally entitled thereto, from the money on deposit with the assistant treasurer of the United States, subject to the order of the court in this case. And it is further ordered that the said residue of the gross proceeds deposited with the assistant treasurer in this case be paid into the treasury of the United States for distribution. It is further ordered, by consent of the attorney of the United States, that the proceeds of sale of said steamer, James Battle, remain on deposit with the assistant treasurer of the United States, subject to the further order of this court, to abide the decree of this court upon the hearing of the claim for liens.

PHILIP FRASER, *Judge.*

10

11 District court of the United States for the southern district of Florida.

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THE STEAMER JAMES BATTLE and CARGO. } Prize.

Papers returned as found on board the said vessel, the James Battle, and read in evidence on the hearing of this cause.

Confederate States of America.

No. 35. Permanent register of vessels. No. 35.

[SEAL.] RO. TYLER, *Register.*

In pursuance of existing laws, and an act of the congress of the Confederate States of America, entitled "An act to provide for the registration of vessels owned in whole or in part by the citizens of the Confederate States," S. S. Webb, of Mobile, State of Alabama, having taken or subscribed the oath required by law, and having sworn that himself and R. S. Webb, composing the firm of S. S. Webb & Co., trustees, and agents of Association of Stockholders, are

the only owners of the ship or vessel called the James Battle,
12 of Mobile, whereof J. J. Cox is at present master, and is a citizen of the Confederate States, as he hath sworn; and that the said ship or vessel was built at New Albany, State of Indiana, in the year 1860, as per enrolment No. 27, issued at this port on the 2d of August, 1860; now surrendered—property having changed.

And said enrolment having certified that the said ship or vessel has one deck and no mast, and that her length is two hundred and nine feet; her breadth thirty-four $\frac{6}{12}$ feet; her depth six $\frac{3}{12}$ feet, and that she measures four hundred and seven tons; and that she is a steamer, has round stern, paddle wheels, and sharp bow; and the said S. S. Webb having agreed to the description and admeasurement above specified, and sufficient security having been given according to law, the said steamer has been duly registered at the port of Mobile.

Given under my hand and seal at the port of Mobile, this 16th day of July, one thousand eight hundred and sixty-three.

[SEAL.] J. C. COLSON, *Dept. Collector.*

13 *Depositions taken in preparatorio.*

District court of the United States for the southern district of Florida.

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THE STEAMER JAMES BATTLE and CARGO. } Prize.

Deposition of Jesse J. Cox, before George D. Allen, prize commissioner, at Key West, July 25th, 1863.

To the first interrogatory deponent answers, that his name is Jesse J. Cox; born in the State of Alabama, and has always resided in that State. He is a citizen of the Confederate States, and owes allegiance to the government of the Confederate States of America. He is married; wife and family reside in Montgomery, State of Alabama.

To the second interrogatory, deponent that he was on board of the steamer James Battle at the time of her capture.

To the third interrogatory deponent answers that, she was captured on the 18th day of July, instant, about fifty miles south southeast from Mobile point. She was brought to Key West. She had
14 no commission authorizing her to make prizes. No reason was assigned by the captors for the seizure.

4th. To the fourth interrogatory deponent answers, that the James Battle sailed under the confederate colors. She had also Marryatt's signals on board.

5th. To the fifth interrogatory deponent answers, that no resistance was made to the capture. The De Soto fired six or eight guns. The United States steamer De Soto made the capture. He did not see any other vessels at the time of surrender. The James Battle is a merchant steamer.

6th. To the sixth interrogatory deponent answers, that the James Battle was steering to enter Havana, as the first port, at the time of capture; thence she would probably have returned to Mobile had she not been captured.

7th. To the seventh interrogatory deponent answers, that the name of the vessel captured is the James Battle; himself was master at the time of capture. S. S. Webb, & Co., Mobile, Alabama, appointed him to the command at Mobile, in May last, and delivered the vessel to him.

8. To the eighth interrogatory deponent answers, that the James Battle is about four hundred tons burden; thirty-eight, all told, belonged to *to* the vessel, all on board at the time of capture. The crew were shipped and joined the vessel at Mobile the present month for a voyage to Havana and back; were hired by himself. The pay was by the run.

9th. To the ninth interrogatory deponent *deponent* answers, that he was the master of the steamer James Battle at the time of her capture. He owned an interest in the vessel and her cargo, about ten thousand dollars. The crew were more or less interested in the spirits turpentine on board and one boat on deck.

10th. To the tenth interrogatory deponents answers, that he has known the steamer James Battle three years; first saw her at Mobile. She was built in Indiana. She has always been called the James Battle.

11th. To the eleventh interrogatory deponent answers, that the James Battle draws five and a half feet, and was fully loaded for sea when she left Mobile.

12th. To the twelfth interrogatory deponent , that the steamer James Battle had a register issued at the custom house, Mobile. The voyage on which she was captured began at Mobile. She sailed from that port on the 16th instant of July. The voyage was to have ended on her return to Mobile.

13th. To the thirteen interrogatory deponent answers, that the cargo of James Battle consisted of about 67 bales of cotton, 29 bags of cotton, barrels spirits of turpentine, 50 barrels rosin, when she sailed from Mobile, and she had about 639 bales of cotton, 29 bags of cotton, barrels spirits of turpentine, about 30 barrels rosin on board when she was captured.

14th. To the fourteenth interrogatory deponent answers, that the steamer James Battle was owned at the time of her capture by a company of stockholders, of whom S. S. Webb & Co. are agents; he knew of the purchase of said steamer by Messrs. S. S. Webb & Co., at public sale in March last at Mobile.

15th. To the fifteenth interrogatory deponent answers, that he did not know of any bill of sale for the said vessel being given the purchasers.

16th. To the sixteenth interrogatory deponent answers, that the cargo on board the said steamer James Battle was put on board at Mobile in July; Messrs. S. S. Webb & Co., American merchants at Mobile, shipped the cargo; the same was owned by the com-

17 pany aforesaid, owning the vessel, and was to have been delivered at Havana for the account, risk, and benefit of said company, and if restored would still belong to them, as he has reason to know from his own knowledge of the transactions in relation to said property.

17th. To the seventeenth interrogatory deponent answers, that the cargo was carried on owners' account. He did not sign any bills of lading.

18th. To the eighteenth interrogatory deponent answers, that the register of the vessel was on board, showing the ownership of the same, but no papers showing the ownership of the cargo were on board at the time of capture. He delivered the register to the officers of the De Soto on the day of capture; the same is now in the hands of the prize commissioner.

19th. To the nineteenth interrogatory deponent answers, that the steamer James Battle was captured on the 18th day of July inst., about fifty miles south southeast from Mobile Point, about ten o'clock in the morning, the vessel was not under charter for the voyage.

20th. To the twentieth interrogatory deponent answers,
18 that the register and clearance papers of the vessel from Mobile, and letters from Messrs. H. O. Brewer & Co., Mobile, to parties in Havana, and some private letters were on board when she sailed from Mobile; the letters were thrown overboard the morning of the capture by one of the crew by his own order.

21st. To the twenty-first interrogatory deponent answers, that he knew that the port of Mobile was blockaded by United States naval vessels, at the time the steamer James Battle sailed from that port.

22d. To the twenty-second interrogatory deponent answers, that Messrs. S. S. Webb & Co., agents of said vessel at Mobile, engaged him to take said vessel out of that port, all knowing of the blockade.

23d. To the twenty-third interrogatory deponent answers, that the papers of the steamer James Battle were not examined after he took command by any officers of the United States till she was captured.

24th. To the twenty-fourth interrogatory deponent answers, that the steamer James Battle has not attempted to go to sea from
19 Mobile since the blockade, till the voyage on which she was captured.

25th. To the twenty-fifth interrogatory deponent answers, that the said vessel has not been before seized as prize.

26th. To the twenty-sixth interrogatory deponent answers, that he would lose his interest in the vessel and cargo, and pay for the trips, if the vessel and cargo are condemned. No indemnity or satisfaction or promise of satisfaction has been received for any loss he might sustain by the capture or detention.

27th. To the twenty-seventh interrogatory deponent , that he does not know of any insurance on the said vessel or cargo.

28th. To the twenty-eighth interrogatory deponent answers, that the risk of the market for the cargo was with the shippers.

29th. To the twenty-ninth interrogatory deponent answers, that the said cargo was grown in Alabama and Mississippi.

30th. To the thirtieth interrogatory deponent answers, that the cargo on board the James Battle at the time of her capture
20 was put on board at Mobile, in July, at the wharf.

31st. To the thirty-first interrogatory deponent answers, that there are no other papers relating to the vessel or cargo than those delivered to the officers of the De Soto on the day of capture.

32d. To the thirty-second interrogatory deponent answers, that the papers on board at the time of capture of the steamer James Battle were all delivered to the officers of the De Soto on the day of capture; the same are now in custody of the prize commissioner.

33d. To the thirty-third interrogatory deponent , that cotton was thrown overboard by his order, to lighten the vessel, while being pursued on the morning of the capture.

34th. To the thirty-fourth interrogatory deponent answers, that there were five passengers on board the steamer James Battle at the time of her capture; Mr. Ford, a planter, resides at Memphis, Tennessee, as he has been informed; Mr. Wm. J. Mathews, steamboat man, resides at Mobile; Mr. Burns, who has been in Mobile the last two years; Mrs. Godmano and son; all came on board at Mobile, to go to Havana; he don't know on what business; most of the offi-
21 cers reside at Mobile; there was no one secreted on board at the time of capture.

35th. To the thirty-fifth interrogatory deponent answers, that S. S. Webb & Co., of Mobile, procured the register of the vessel at the custom-house, Mobile, in July, the present month. All of the papers are true and fair which were delivered to the officers of the De Soto. He signed the papers necessary to clear the vessel, at the custom-house, Mobile.

36th. To the 36th interrogatory deponent answers, that he first saw the De Soto about six o'clock on the morning of the capture; the James Battle was then on about thirty-five or forty miles from Mobile Point, steering for Havana; she changed the course more to the westward, between seven and eight o'clock in the morning; she was overtaken by the De Soto about ten o'clock. They saw a United States steamer early in the morning, which afterwards came up and spoke the De Soto.

37th. To the thirty-seventh interrogatory deponent answers, that the said steamer James Battle was purchased in Mobile at auction sale, in March last, by S. S. Webb & Co., for the sum of forty thousand two hundred and fifty dollars, which was a bona fide pur-
22 chase. If restored, she would belong to a company, of which Messrs. S. S. Webb & Co., of Mobile, are agents.

38th. To the thirty-eighth interrogatory deponent answers, that there no guns mounted on board, or arms or munitions of war of any kind on board, or thrown overboard to prevent suspicion.

39th. To the 39th interrogatory deponent answers, that Messrs. S. S. Webb & Co., of Mobile, are agents for a company of stockholders who own the said steamer James Battle and her cargo. The true destination was Havana.

40th. To the fortieth interrogatory deponent answers, that the James Battle had no convoy.

41st. To the forty-first interrogatory deponent answers, that the steamer James Battle came out from Mobile on the night of the 17th of July, instant, which port was then blockaded by United States vessels.

42d. To the forty-second interrogatory deponent answers, that the steamer James Battle has not had any commission or letters-of-
23 marque.

43d. To the forty-third interrogatory deponent answers, that the said steamer has not acted in company with any armed vessel.

J. J. COX.

Sworn and subscribed before me, this 25th day of July, 1863.

GEORGE D. ALLEN,
24 *Prize Commissioner.*

25 In admiralty.

To the judge of the district court of the United States for the southern district of Florida:

James Brooks, of the city and port of New Albany, and State of Indiana, exhibits this his claim and petition, and therein does allege and articulately propound as follows:

That on or about the 30th day of May, 1860, your petitioner was engaged at the port aforesaid in the queensware and crockery business, and at said date, while the steamer James Battle was lying at the said port of New Albany, one James A. Grew, who was then and there the master of said boat, represented to your petitioner that said steamboat stood in need of divers articles of queensware, china ware, cutlery, &c., in order to render her competent and seaworthy to proceed upon her contemplated voyage, and your petitioner was then and there employed by said Grew to provide the supplies and materials aforesaid.

2d. In pursuance of said representations and agreements, and to the end that said steamer might be enabled to proceed upon her intended voyages, at the date aforesaid and at the port aforesaid
26 the petitioner undertook and did furnish the articles beforementioned, amounting in the aggregate to the sum of $3,408 32.

3d. The said supplies and articles were so furnished upon the credit of the said boat, as well as upon the credit of her owner, and were suitable, proper, and necessary for the purpose of enabling the said steamer to depart upon her contemplated voyage.

4th. The said sum of $3,408 32, together with interest, remains wholly unpaid and due the petitioner.

5th. At the time when said supplies were so furnished, the steamer James Battle was a foreign vessel, not owned by any person or persons resident in the State of Alabama, and was of about 500 tons burden, built to be employed in the business of navigation between ports and places and different States and Territories of the United States, upon the lakes and navigable waters connecting said States.

6th. Shortly after the said supplies and articles were so furnished

as aforesaid, to and for the use of said boat, she left the port of New Albany, and has never since returned thereto or to the
27 waters bordering the States of Indiana and Kentucky; but from the time when the people of the States of Louisiana, Alabama, and Mississippi came under insurrectionary control, and were declared to be in rebellion against the government of the United States, said steamer James Battle was continuously in the waters of the States last aforesaid, and it became and was impracticable and unlawful for this petitioner to *to* sue out any process against said boat, and she remained in *in* the waters last aforesaid until on or about the 20th of July, 1863, when she was captured by the naval power of the United States, and brought to this district for condemnation, charged with having become forfeited to the United States, and has since been condemned as lawful prize.

7th. And the petitioner further states that he is now and always has been a true and loyal citizen of the United States, faithful to the laws, and was in no way concerned in the unlawful character of the voyage by reason of which the said vessel was condemned.

8th. That all and singular the premises are true.

Wherefore, in consideration of the premises, the petitioner
28 prays that out of the proceeds of said vessel, now or to be paid into the registry of this court, that he be decreed to be paid the amount of his said demand, together with costs and interest, together with such other and general relief as may be proper, and as the court is competent to give in the premises.

JAMES BROOKS.

STATE OF INDIANA, *City of New Albany:*

I, Robert M. Weir, a commissioner of the United States in and for said State, certify that said James Brooks, to me personally well known, came, this 21st day of November, 1863, at said city of New Albany, and made oath that the foregoing petition is true in substance and fact, to the best of his knowledge and belief.

Witness my hand as such commissioner the day and at the city aforesaid.

R. M. WEIR,
Commissioner for Indiana.

Stamp, 5c.

W. C. MALONEY, *Proctor.*

29 *In admiralty.*

To the judge of the district court of the United States for the southern district of Florida:

Daniel Hipple, John Q. A. Smith, and Alfred S. Roger, of the city and port of New Albany, and State of Indiana, exhibit this their claim and petition, and herein do allege and articulately propound as follows:

1. On the day of January, 1860, and for a long time before and since, the petitioners were copartners together, under the style of

In the Supreme Court of the United States.

DECEMBER TERM, 1867.

Steamer JAMES BATTLE and cargo, James Brooks *et al.*, intervenors, appellants,

vs.

UNITED STATES.

No. 129.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

STATEMENT FOR UNITED STATES.

This steamer and cargo were captured on July 18, 1863, for breach of the blockade of Mobile, and condemned as prize of war on the 16th of January, 1864.—(Rec. pp. 3, 4.)

No claim of ownership was interposed for either vessel or cargo; but on the 23d of December, 1863, interventions were filed by parties claiming liens on the vessel for materials and labor furnished and bestowed in building and fitting out the steamer at New Albany, Indiana, in 1859 and 1860, and amounting in the aggregate to $43,683.72.—(Rec. pp. 10, 13.)

It also appears that certain insurance companies, at Cincinnati, Ohio, filed claims for the amount of premium notes held by them for insurance on the steamer, effected in May, 1860. All these claims were dismissed. (Rec. pp. 14,16.) But the material men, claimants, have alone appealed from the decree. The insurance companies have not appealed.

Two questions appear to have been decided in the court below—

1st. Whether a mere lien on property, captured *jure belli*, is an interest sufficient to support a claim in a court of prize? *

2d. Whether the claims asserted against the proceeds of the sale of the prize were protected by, and allowable, under the act of March 3, 1862.—(12, Stats, 256.)

Both questions were decided by this court in the negative, in the case of THE HAMPTON. (5, Wallace, 372.) The decree dismissing the claims must, therefore, be affirmed.

HENRY STANBERY,
Attorney General.
J. HUBLEY ASHTON,
Special Counsel of the United States.

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* Lee The Nassau, 4 Wallace, 640
" " Tobago, 5 Robinson, 222.
" " Frances, 8 Cranch. 335, 418.
" " Eenrom, 2 Rob. 5

41st. To the forty-first interrogatory deponent answers, that the steamer James Battle came out from Mobile on the night of the 17th of July, instant, which port was then blockaded by United States vessels.

42d. To the forty-second interrogatory deponent answers, that the steamer James Battle has not had any commission or letters-of-
23 marque.

43d. To the forty-third interrogatory deponent answers, that the said steamer has not acted in company with any armed vessel.

J. J. COX.

Sworn and subscribed before me, this 25th day of July, 1863.

GEORGE D. ALLEN,
24 *Prize Commissioner.*

25 In admiralty.

To the judge of the district court of the United States for the southern district of Florida:

James Brooks, of the city and port of New Albany, and State of Indiana, exhibits this his claim and petition, and therein does allege and articulately propound as follows:

That on or about the 30th day of May, 1860, your petitioner was engaged at the port aforesaid in the queensware and crockery business, and at said date, while the steamer James Battle was lying at the said port of New Albany, one James A. Grew, who was then and there the master of said boat, represented to your petitioner that said steamboat stood in need of divers articles of queensware, china ware, cutlery, &c., in order to render her competent and seaworthy to proceed upon her contemplated voyage, and your petitioner was then and there employed by said Grew to provide the supplies and materials aforesaid.

2d. In pursuance of said representations and agreements, and to the end that said steamer might be enabled to proceed upon her intended voyages, at the date aforesaid and at the port aforesaid
26 the petitioner undertook and did furnish the articles beforementioned, amounting in the aggregate to the sum of $3,408 32.

3d. The said supplies and articles were so furnished upon the credit of the said boat, as well as upon the credit of her owner, and were suitable, proper, and necessary for the purpose of enabling the said steamer to depart upon her contemplated voyage.

4th. The said sum of $3,408 32, together with interest, remains wholly unpaid and due the petitioner.

5th. At the time when said supplies were so furnished, the steamer James Battle was a foreign vessel, not owned by any person or persons resident in the State of Alabama, and was of about 500 tons burden, built to be employed in the business of navigation between ports and places and different States and Territories of the United States, upon the lakes and navigable waters connecting said States.

6th. Shortly after the said supplies and articles were so furnished

as aforesaid, to and for the use of said boat, she left the port of New Albany, and has never since returned thereto or to the
27 waters bordering the States of Indiana and Kentucky; but from the time when the people of the States of Louisiana, Alabama, and Mississippi came under insurrectionary control, and were declared to be in rebellion against the government of the United States, said steamer James Battle was continuously in the waters of the States last aforesaid, and it became and was impracticable and unlawful for this petitioner to *to* sue out any process against said boat, and she remained in *in* the waters last aforesaid until on or about the 20th of July, 1863, when she was captured by the naval power of the United States, and brought to this district for condemnation, charged with having become forfeited to the United States, and has since been condemned as lawful prize.

7th. And the petitioner further states that he is now and always has been a true and loyal citizen of the United States, faithful to the laws, and was in no way concerned in the unlawful character of the voyage by reason of which the said vessel was condemned.

8th. That all and singular the premises are true.

Wherefore, in consideration of the premises, the petitioner
28 prays that out of the proceeds of said vessel, now or to be paid into the registry of this court, that he be decreed to be paid the amount of his said demand, together with costs and interest, together with such other and general relief as may be proper, and as the court is competent to give in the premises.

JAMES BROOKS.

STATE OF INDIANA, *City of New Albany:*

I, Robert M. Weir, a commissioner of the United States in and for said State, certify that said James Brooks, to me personally well known, came, this 21st day of November, 1863, at said city of New Albany, and made oath that the foregoing petition is true in substance and fact, to the best of his knowledge and belief.

Witness my hand as such commissioner the day and at the city aforesaid.

R. M. WEIR,
Commissioner for Indiana.

Stamp, 5c.

W. C. MALONEY, *Proctor.*

29 *In admiralty.*

To the judge of the district court of the United States for the southern district of Florida:

Daniel Hipple, John Q. A. Smith, and Alfred S. Roger, of the city and port of New Albany, and State of Indiana, exhibit this their claim and petition, and herein do allege and articulately propound as follows:

1. On the day of January, 1860, and for a long time before and since, the petitioners were copartners together, under the style of

Hipple, Smith & Co., in carrying on, at the port aforesaid, the business of steamboat cabin building, and on or about said date the owners of the steamer called the James Battle, then being built at said port of New Albany, employed and agreed with the petitioners at said port to furnish all the necessary materials, and build for the use of said boat a cabin thereupon, for the agreed price of $7,230 92, and in pursuance of said agreement, these petitioners proceeded to and did furnish the materials, and erect the said cabin upon the said steamer James Battle at the port of New Albany aforesaid.

30 2. There has been paid them on account of said work and labor and materials furnished as aforesaid the sum of $3,615 45, and the balance, to wit, the sum of $3,615 45, still remains wholly unpaid and due the petitioners.

3. At the time of making the contract and building the said cabin, for a long time before and since hitherto, an act of the general assembly of the State of Indiana entitled an act to revise, simplify, and and abridge the rules of practise, pleadings, and forms in civil actions in the courts of this State, to abolish distinct forms of actions at law, and to provide for the administration of justice in an uniform mode of pleading and practise, without distinction between law and equity, approved June 18, 1852, was in force in the State of Indiana, and, by sections 655, 656, and 657 of said act, it was enacted that all boats, vessels and watercraft of every description found in the waters of this State are liable for all debts contracted by the master, owner, agent, clerk, or consignee thereof on account of work done or materials furnished, building, repairing, fitting out, furnishing,

31 or equipping such boat, vessel, or watercraft. Claims growing out of the above causes are liens upon the boat, vessel, or watercraft, their apparel, tackle, furniture, and appendages.

Such liens shall take preference of any claims against the boat itself, or all or any of its owners, master, or consignees growing out of any other cause than those above enumerated.

4. The said work was so done, and the materials furnished upon the credit of the boat, and relying upon the provisions of the act aforesaid, as well as upon the credit and responsibility of the owners.

5. Shortly after the said work was so done and the materials furnished, the said steamer James Battle left the said port of New Albany, and has never since returned thereto, or to the waters bordering the States of Indiana or Kentucky, but ever since the people of the States of Alabama, Louisiana, and Mississippi came under insurrectionary control, and were declared to be in rebellion against the government of the United States, the said steamer was continuously in the waters of the States last aforesaid, and therefore it became, and was, impracticable and unlawful for the petitioners to sue out any process against said boat, to enforce and assert their

32 lien aforesaid, and she so remained in the waters last aforesaid, until on or about the 20th of July, 1863, when she was captured by the naval power of the United States, and brought to this district for condemnation, charged with having become forfeited to the United States, and has since been condemned as lawful prize.

6. And your petitioners further state that they are now and have always been true and loyal citizens of the United States, faithful to the laws, and were in no way connected with the unlawful conduct of the said vessel, by reason of which she was condemned as aforesaid.

7. That all and singular the premises are true.

Wherefore your petitioners pray that, out of the proceeds now or hereafter to be paid into the registry of this court, they be decreed to be paid the amount of their said debt, together with interest and costs, and such other relief as may be proper, and the court is competent to give in the premises.

DANIEL HIPPLE.
JOHN A. SMITH.
A. S. RAGER, sr.

33 STATE OF INDIANA, *City of New Albany, ss:*

I, Robert M. Weir, a commissioner of the United States in and for said State, certify that said Daniel Hipple, John A. Smith, and Alfred S. Rager, sen., to me personally well known, came before me this 20th day of October, 1863, at said city of New Albany, and made oath that the foregoing petition is true in substance and fact, to the best of their knowledge and belief.

Witness my hand as such commissioner, the day and at the city aforesaid.

R. M. WEIR,
Commissioner of U. S. for Indiana.
W. C. MALONEY,
Proctor.

34

35 Afterwards, to wit, on the seventh day of February, A. D. 1866, the further hearing of this cause, upon claims for liens, came in before this court. Present: The honorable Philip Fraser, judge.

Horner G. Plantz, attorney of the United States, appearing on behalf of the United States, and W. C. Maloney, esq., on behalf of the petitioners aforesaid, when the court proceeded to hear this cause upon the allegation and pleadings.

The cause having been fully argued by the respective counsel, the premises were thereupon submitted to the court.

Afterwards, upon consideration thereof, on the 22d day of February, the parties aforesaid being present, it was ordered, adjudged, and decreed as follows, to wit:

THE UNITED STATES
vs.
THE STEAMER JAMES BATTLE and CARGO.

The steamer James Battle was captured by the U. S. steamer De Soto on the 18th day of July, 1863, and was condemned in this court January 13th, 1864, upon full proof, for violating the blockade,
36 and as enemy property, as lawful prize of war. On the 25th

day of February, 1864, a final decree of distribution was entered as to the cargo and apparel of the vessel, but the proceeds of the vessel were reserved to be disposed of upon the petitions of James Brooks and others intervening for the protection of claims which they allege they are entitled to have paid out of said proceeds. These petitions and claims were filed on the 23d of December, 1863. Sixteen of these claims are for materials and labor furnished and bestowed in building and fitting out the said steamer at New Albany, in the State of Indiana, in 1859 and 1860, and amounting in the aggregate to the sum of $43,683 72. The proceeds of the vessel amount to $23,000.

Six insurance companies at Cincinnati, Ohio, also set up claims upon said proceeds for $506 each for the premium for insurances effected upon the said steamer by the master and clerk on the 19th day of May, 1860, for which several sums the said master and clerk executed and delivered to the said petitioners, respectively, the obligations of the said steamer, James Battle, and owners, for the sum of five hundred dollars, payable nine months after date, which said several notes are still in existence and unpaid, but cannot
37 be now produced or filed because they were sent to Alabama for collection before the war. It is admitted by the att'y for the United States that the facts set forth by the petitioners are true, as stated in the petitions, and that the abstracts of the laws of the States of Indiana and Ohio filed with said petitions, as stated therein, are correct and true abstracts and statements thereof. That by the laws of Indiana the claims of the petitioners for surplus labor and materials furnished to said steamer while lying in the waters of that State, are liens upon said steamer, and could have been enforced by a seizure and sale thereof had she ever returned within the jurisdiction of Indiana.

There is no allegations in the petitions of the parties who claims liens upon this steamer for insurance; that at the time when the insurances were effected, the said steamer was navigating the waters within or bordering on the State of Ohio, or that she was at any time thereafter within the territorial limits and jurisdiction of that State. In the absence of such allegations, it will be presumed that she was not, especially as it does appear from the brief of counsel for these petitioners that this steamer was finished about the 1st
38 of June, 1860, some time after the date of the policies, and immediately left New Albany for Mobile, Alabama, and never returned within the jurisdiction of Indiana. Such being the facts, it cannot be seen how the laws of Ohio can affect this steamer. or how any liens can attach by virtue of State laws to property which has never been within the jurisdiction of the State.

I am not aware that such extra territorial power has ever been seriously asserted for any State law.

The conclusion, then, is that no lien attached to this vessel by virtue of the laws of Ohio for these insurances, and that therefore these claims are not such as might be specifically enforced against the property. The petitioners of the Commercial Insurance Com-

pany, Western Insurance Company, City Insurance Company, Fireman's Insurance Company, Eagle Insurance Company, and Central Insurance Company, all of the city of Cincinnati, in the State of Ohio, must therefore be dismissed. The claims of James Brooks and others, of New Albany, in the State of Indiana, for supplies, labor, and materials furnished and bestowed in the building, fitting out, and furnishing said steamer were, it is admitted, liens upon the said steamer according to the laws of Indiana, and might have
39 been enforced against her before she left the waters, or had she ever returned within the jurisdiction of that State.

It is to be regretted that an authentic copy of the laws of Indiana upon this subject has not been furnished to the court for its information by the petitioners.

The court cannot tell what limitations may exist in said laws or what acts may be necessary on the part of such claimants in order to entitle them to the benefits of it. No law can be intelligently construed from a mere paragraph or abstract, and the court cannot conceive that counsel have fully discharged their duty to the court by stating their impression of the laws and their conclusions as to its effect. The liens which existed was not a lien under the general maritime law, and no proceeding in rem would have been sustained in the admiralty in the absence of the State providing for liens in such cases. This was not the case of a foreign ship needing supplies in the absence of owner. These are clearly liens created by State laws alone, and to be enforced only within the jurisdiction of the State, unless by act of Congress the operation of the State laws has been extended. This vessel was built and fitted out at New Albany, and was permitted to leave the State of Indiana on her com-
40 pletion, without any attempt, on the part of the petitioners, to enforce their liens. It may, therefore, be fairly presumed that she left with their consent. It will not be construed that the laws of Indiana creating these liens had, at that time, viz., in June, 1860, any operation beyond the limits of that State; the act of Congress relied upon by the petitioners not having been passed until 1863. It would seem, then, that when this steamer left the State of Indiana, she could no longer be affected by the operation of those laws; in other words, that the liens created by those laws ceased to exist, and that the remedy against the vessel by virtue of these laws was suspended, and could only be enforced upon the contingency of the return of the vessel within the jurisdiction of that State. Thus stood the claims of these petitioners, on the passage of the act of Congress, approved March 3d, 1863. It is contended by the counsel for the petitioners that this act recognizes the liens created by the State laws, and confers upon this court the power to protect and enforce them, where property shall be condemned by virtue of the acts of July 13th, 1861, and August 6th, 1861, or any other laws on
41 that subject, and that the law of prize is another law upon that subject. This vessel was not condemned by virtue of said acts, but as prize of war. The act of July 13th, 1861, is entitled An act further to provide for the collection of duties on imports, and for

other purposes, and provides among other things for the forfeiture of property passing to and from insurrectionary States, and of ships and vessels belonging to citizens of such States. The act of August 6th, 1861, is entitled An act to confiscate property used for insurrectionary purposes. The court does not understand that it was the intention of Congress, by the act of March 3d, 1863, to modify or repeal the law of prize, in any particular, or that the law of prize is, upon the same subject, embraced in the acts aforesaid. No liens are recognized in prize cases, which rest in action merely, such as bottomry bonds, liens by contract, &c., for these are claims which no admiralty court can examine with effect. The Mary Ann, 106; the , and Cr., 418. But admitting, for the sake of the argument, that the act of March 3d, 1863, was intended to apply to prize of war, still the court would be called upon to inquire whether these claims were such as might have been specifically enforced against the steamer in the loyal State of Indiana, where they arose. It
42 seems clear that they could not. The steamer was not, at the time of her capture, within the reach of the laws of Indiana, and it cannot be said that those claims can have any extra territorial validity beyond an execution at law, which might also be levied upon this vessel should she ever return. But the vessel has never returned, and the presumption is strong that she never would have returned as that she would. These claims could not have been enforced at the time of the capture, under the laws of Indiana, and, therefore, do not come within the meaning of that act. (Conk. ad., 292.)

These petitioners' claims must be dismissed.

PHILIP FRASER, *Judge.*

Afterwards, to wit, on the 23d day of said month of February, the following order was made in this cause:

In the matter of James Brooks and others, petitioners in this cause, the said petitions having been dismissed by decree of this court, and the said petitioners, by their proctor, having prayed an appeal to the Supreme Court of the United States, and having asked for an
43 extension of time to enable said petitioners, residents of the State of Indiana, to perfect the said appeal.

It is ordered that the said petitioners have ninety days for the perfection of appeals in said cause.

PHILIP FRASER, *U. S. D. Judge.*

And afterwards, to wit, on the 26th day of April, the said petitioners having filed their bond in the sum of two hundred and fifty dollars, as security, to answer all costs and expenses that may be adjudged and decreed against them, and to prosecute said appeal to effect.

Whereupon it is ordered that said appeal be accordingly allowed.

44 District court of the United States for the southern district of Florida.

I, Wm. S. Allen, clerk of the district court of the United States for the southern district of Florida, do hereby certify, that the foregoing document, hereunto annexed, is a correct transcript of record of this court in the cause of—

THE UNITED STATES
vs.
THE STEAMER JAMES BATTLE and cargo,

lately adjudicated in this court, as appears from the admiralty records and files of said court, kept in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Key West, in the southern district of Florida, this 26th day of May, in the year of our Lord one thousand eight hundred and sixty-six, and independence of the United States the ninetieth.

[SEAL.] WM. S. ALLEN, *Clerk.*